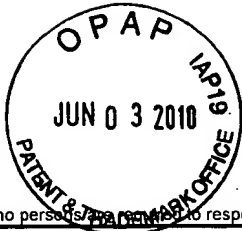


Doc Code: AP.PRE.REQ



PTO/SB/33 (07-09)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

41145

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on _____

Signature _____

Typed or printed name _____

Application Number

09/743,710

Filed

January 16, 2001

First Named Inventor

Konstantinos POULAKIS

Art Unit

1795

Examiner

J. J. Rhee

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- ☒ attorney or agent of record.
Registration number 28,770

- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____


Signature

Mark S. Bicks

Typed or printed name

(202) 659-9076

Telephone number

June 3, 2010

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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41145



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	
	:	
Konstantinos POULAKIS et al.	:	PATENT
	:	
Serial No.: 09/743,710	:	Art Unit: 1795
	:	
Filed: January 16, 2001	:	Examiner: J. J. Rhee
	:	
For: METHOD FOR PRODUCING A	:	
SHAPED FOAM BODY, ESPECIALLY	:	
A FOAM PADDING ELEMENT FOR A	:	
VEHICLE SEAT	:	

PRE-APPEAL REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the April 28, 2010 final Office Action, reconsideration of the above-identified application is requested in view of the following comments.

Claims 9-19 are pending in the application, with claims 9 and 19 being independent and described in the January 21, 2010 Amendment.

In the July 30, 2009 Board decision, the subject matter of claim 9, as well as the claims dependent thereon, was held to be patentably distinguishable over the Billarant patent and the Provost International publication, for the reasons advanced on page 10 of the Board decision. Claim 19 had previously been found allowable, and recites limitations such that the same reasons

of the Board holding claim 9 patentably distinguishable over that patent and that publication also apply to claim 19.

Despite that Decision on appeal overturning the rejection under 35 U.S.C. §103 on the grounds that the claims are unpatentable over U.S. Patent No. 5,422,156 to Billarant and WO 8603164 to Provost, claims 9-19 now stand rejected under 35 U.S.C. §103 over those same two patent documents, but with the rejection now being phrased as being over the Provost publication in view of the Billarant patent.

The statement of the rejection lacks any allegation that it would be obvious to add the alleged Billarant teachings to the method allegedly disclosed in the Provost publication. This omission, by itself, renders the rejection improper.

This rejection improperly fails to follow the law of the case as provided by the prior Decision of the Board of Patent Appeals and Interferences holding that the claims are patentably distinguishable over that same Provost publication and that same Billarant patent. Such action also renders the rejection improper, since the Board obviously considered this rejection, but did not pose a new ground of rejection. The Examiner contends that by reversing the two citations, this alleged new ground of rejection renders the claims unpatentable for different reasons than in the prior Board of Patent Appeals and Interferences Decision, particularly since the Provost publication “teaches protecting the adhering elements on the adhesive closing part against penetration of foam by arranging a foam inhibiting cover (figure 5, number 56) on the second surface on the adhesive closing part to be remote from the adhering elements.” The Board, in the last paragraph on page 10 of its July 30, 2009 decision, held that the citations, including the

Provost publication, failed to suggest a cover element to protect adhering elements in reversing the rejection under 35 U.S.C. §103.

Further, the Provost publication has permanent magnets 70 located along the center of the trough 66 in the mold to attract metal strip 20 disposed between the hook fastener tape 16 and the substrate 18. The use of the Provost magnets 70 along the center of the trough 66 does not disclose or render obvious the use of permanent magnets placed laterally about the periphery of the mold portion receiving the adhering elements as recited in claims 9 and 19. The Billarant patent does not satisfy this deficiency in the Provost publication since the magnet 52 disclosed therein is also located in a pocket 50 that receives the adhering elements and not about the periphery of the pocket as required in claims 9 and 19.

The Examiner contends that the magnets need not be about the entire periphery of the mold portion and that the Provost publication in Fig. 5 shows them placed laterally about the periphery of a portion of the forming mold. However, Fig. 5 only shows magnet 70 extending along a portion of the central line of the mold and spaced from the periphery at the sole end as illustrated. The cut end at the right of the figure does not show the periphery of the mold portion, but only shows an intermediate portion.

The alleged disclosure of the ferromagnetic coating in column 1, lines 33-34, of the Billarant patent merely refers to a ferromagnetic coating applied to marginal areas of upstanding hooks. Such portion of the Billarant patent does not disclose or render obvious use of a ferromagnetic coating on a foam-inhibiting covering as recited, for example in claim 9, to cooperate with the permanent magnets laterally about the periphery of the portion of foaming mold receiving the adhering element as required in the claims.

Claim 19 is further patentably distinguishable by the recited felt or fleece lamina.

Thus, claims 9 and 19 are patentably distinguishable.

Claims 10-18, being dependent upon claim 9, are also allowable for the above reasons. Moreover, these dependent claims recite additional features further distinguishing them over the cited patents. Specifically, the polyurethane with added iron particles of claim 10, the adhesive layer of claim 11, the covering of claims 12 and 13, the felt of claim 14, the fleece of claim 15, the placement of the adhering elements in a recess and the border overlapping the recess of claim 16, the use of the mold part in claim 17, and the use of the foam body part and fleece or felt of claim 18 are not anticipated or obvious, particularly within the overall claimed combination.

In view of the foregoing, claims 9-19 are allowable. Prompt and favorable action is solicited.

Respectfully submitted,



Mark S. Bicks
Reg. No. 28,770

Roylance, Abrams, Berdo & Goodman, L.L.P.
1300 19th Street, N.W.
Washington, D.C. 20036
(202) 659-9076

Dated: June 3, 2010